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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,320	03/27/2004	Zeesha Stock		8013
<div>7590 Thomas A. O'Rourke Bodner & O'Rourke 425 Broadhollow Road Melville, NY 11747</div>				
			<div>EXAMINER WEIER, ANTHONY J</div>	
			<div>ART UNIT 1794</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 12/28/2007</div>	<div>DELIVERY MODE PAPER</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/810,320

Applicant(s)

STOCK ET AL.

Examiner

Anthony Weier

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2007.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
4a) Of the above claim(s) 11 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-10, 12, and 13 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. This application contains claims drawn to an invention nonelected with traverse in the reply filed on 3/15/07. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Rapp.

Rapp discloses an egg substitute (replacer) which consists essentially of water, vegetable oil (e.g. corn oil), and a gum component comprising a mixture of gums and potassium salt (see cols. 1 and 2). The amounts of these components also fall within the ranges set forth in the instant claims. For instance, a preferred gum material is approximately 0.34 – 1.6 % (including all gum and potassium salt, col. 2, lines 1-11), the vegetable oil may be about 4%, and, other than tiny amounts of coloring, the remainder would be water (about 94%). For every ounce of vegetable oil, therefore, there is 23.5 ounces of water and about 0.1 ounces (or 0.6 teaspoons wherein 1 ounce = 6 teaspoons) of gum material. The amount of 0.6 teaspoons is considered to be “about” $\frac{3}{4}$ of a teaspoon as called for in the instant claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8, 10, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapp.

Rapp further discloses the use of said egg substitute in a food product containing flour (and, inherently, starch; see Examples).

If it is shown that 0.6 teaspoon does not fall within the range encompassed by the term "about 3/4 teaspoon", the following should be noted. Knowing that 1 teaspoon is about 0.125 ounces, it is clear that Rapp discloses a range of amounts of gum that would meet such a value since Rapp discloses a range of about 0.1 - 0.4 ounces of gum material per ounce of vegetable oil. It would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such amount as a matter of preference within the range of gum component amount disclosed in Rapp.

Claims 2 and 3 call for a particular ratio of water and vegetable not specifically defined using the range limits set forth in Rapp. However, such determination would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been further obvious and full expected that one skilled in the art would have arrived at such claimed ratios through minor manipulation of the amounts to achieve an optimized desired formulation.

The claims further call for the use of canola oil. However, canola oil is a notoriously well known alternative to corn oil, and, absent a showing of unexpected results, it would have been further obvious to have substituted canola oil for corn oil as a matter of preference depending on, for example, what oil is available or as a result of cost considerations.

6. Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapp taken together with Egg Substitutes.

The claims further call for the inclusion of vinegar (acidifying agent) as substitute for a portion of the water. It should noted, however, that it is well known to employ vinegar as a liquid portion in egg substitutes as taught, for example, in Egg Substitutes (see under "Baking Powder"). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed vinegar as a matter of preference depending on the liquid available.

Response to Arguments

7. Applicant's arguments filed 10/4/07 have been fully considered and the amendment as set forth presently has overcome the previous rejections. Due to the significant modification in the scope of the instant claims, a new search was required and new prior art was produced. Applicant's arguments are moot in view of the new rejections set forth above.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
Primary Examiner
Art Unit 1794

Anthony Weier
December 20, 2007



12/20/07